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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,972	05/23/2006	Kyoko Ishimoto	2006_0781A	8893

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EXAMINER	
GWARTNEY, ELIZABETH A	
ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
02/22/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/579,972	ISHIMOTO ET AL.	
	Examiner	Art Unit	
	Elizabeth Gwartney	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 January 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 22, 2010 has been entered.

2. Claim 2 has been cancelled. Claims 1 and 3-8 are pending.

3. The previous rejection under 35 U.S.C. 112, 2nd paragraph has been withdrawn in light of applicants' amendment made September 28, 2009.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 6 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 6, the phrase "relieved astringency" renders the claim indefinite because it is unclear what the astringency is being measured against, i.e. to what degree. Further, it is not clear what properties, i.e. sensory or physical, are encompassed by the term "relieved."

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1 and 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakayama et al. (US 6,287,623) in view of Saito et al. (WO 02/067690- *English Abstract, Machine Translation*).

Regarding claims 1, 3 and 4, Nakayama et al. disclose an acidic food and drink comprising water-soluble polysaccharide derived from soybean seed (i.e. acidic water-soluble polysaccharide) and hydrolyzed soybean protein (i.e. acidic-soluble protein) (Abstract, C2/L24-27, C3/L9-21, C4/L53-55). Further, Nakayama et al. disclose that the acidity of the acidic food or drink is in the range of pH 2.5 to 5.0 (C2/L49-50).

While Nakayama et al. disclose an acidic-soluble soybean protein, i.e. soybean protein hydrolysate, the reference does not disclose wherein the acidic-soluble soybean protein is not a hydrolysate.

Saito et al. teach a soybean protein material which is excellent in solubility, stability, emulsifying properties and gel-forming properties under acidic conditions, thus, advantageously usable in acidic foods (English Abstract). Saito et al. teach that the acidic-soluble soybean protein material is made by subjecting a solution containing soybean protein to a treatment that eliminates or inactivates polyanionic substances therein and/or adding a polycationic substance and then heating at 100°C or above under acidic conditions (English Abstract).

Given Saito et al. teach acidic-soluble soybean protein material identical to that presently claimed it is clear that the protein material would intrinsically display the recited solubility properties.

Nakayama et al. and Saito et al. are combinable because they are concerned with the same field of endeavor, namely, protein-containing acidic food and drinks. Given Saito et al. teach an acidic-soluble soybean protein material which is used in acidic food and drinks, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used an

acidic-soluble soybean protein material, including the protein material taught by Saito et al., and arrive at the present invention.

Regarding claim 5, modified Nakayama et al. disclose all of the claim limitations as set forth above. Saito et al. teach that the acidic-soluble protein material is made in powder from (p.6 machine translation/Example). While modified Nakayama et al. disclose a powdered acidic-soluble soybean protein material comprising water-soluble polysaccharide derived from soybean seed (i.e. acidic water-soluble polysaccharide) (Abstract, C2/L24-27, C3/L9-21, C4/L53-55), the reference does not explicitly disclose that the water-soluble polysaccharide derived from soybean is powder material.

It is well known that water-soluble polysaccharides are available commercially in powder form. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used any commercially available form of water-soluble polysaccharide derived from soybean, including powder, and arrive at the current invention.

Regarding claim 7, modified Nakayama et al. disclose all of the claim limitations as set forth above. Further, given modified Nakayama et al. disclose a powdered protein material identical to that presently claimed, it is clear that the protein material would intrinsically prevent formation of dregs of cloudy-type fruit juice.

Regarding claims 6 and 8, Nakayama et al. disclose a hydrolyzed protein material (i.e. acid-soluble protein) comprising water-soluble polysaccharide derived from soybean seed (i.e. acidic water-soluble polysaccharide) (Abstract, C2/L24-27, C3/L9-21, C4/L53-55).

While Nakayama et al. disclose an acidic-soluble soybean protein, i.e. soybean protein hydrolysate, the reference does not disclose wherein the acidic-soluble soybean protein is not a hydrolysate.

Saito et al. teach a soybean protein material which is excellent in solubility, stability, emulsifying properties and gel-forming properties under acidic conditions, thus, advantageously usable in acidic foods (English Abstract). Saito et al. teach that the acidic-soluble soybean protein material is made by subjecting a solution containing soybean protein to a treatment that eliminates or inactivates polyanionic substances therein and/or adding a polycationic substance and then heating at 100°C or above under acidic conditions (English Abstract).

Given Saito et al. teach acidic-soluble soybean protein material identical to that presently claimed it is clear that the protein material would intrinsically display the recited solubility properties.

Nakayama et al. and Saito et al. are combinable because they are concerned with the same field of endeavor, namely, protein-containing acidic food and drinks. Given Saito et al. teach an acidic-soluble soybean protein material which is used in acidic food and drinks, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used an acidic-soluble soybean protein material, including the protein material taught by Saito et al., and arrive at the present invention.

Given modified Nakayama et al. disclose an acid-soluble soybean protein material identical to that presently claimed, it is clear that the acid-soluble soybean protein material would intrinsically have reduced astringency and prevent formation of dregs of cloudy-type fruit juice.

Response to Arguments

10. Applicant's arguments with respect to claims 1 and 3-8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Gwartney whose telephone number is (571) 270-3874. The examiner can normally be reached on Monday - Friday;7:30AM - 3:30PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. G./
Examiner, Art Unit 1794

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1794